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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ASHLEY BROOKS, Plaintiff, vs. CITY OF SAN DIEGO, JADARRIC DAVIS and DOES 1-20, Defendants.	Case No. '13CV1047 JM JMA **COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL** 1. 42 U.S.C. § 1983 Civil Rights Violations 2. 42 U.S.C. §1983 – Unlawful Customs, Policies, Habits 3. Negligence 4. Battery 5. Civil Code § 52.1 Civil Rights Violations

Plaintiff alleges:

JURISDICTION

1. This is a lawsuit for money damages and is brought pursuant to 42 U.S.C. § 1983, et seq., and the First and Fourth Amendments to the United States Constitution, for personal injuries and violation of constitutional rights by defendant City of San Diego and its police officer, Jadarric Davis. Jurisdiction is founded on 28 U.S.C. Section 1331 and 1343 and the aforementioned statutory and Constitutional provisions. State law claims of negligence, battery and Civil Code section 52.1 civil rights violations are alleged as well. Plaintiff invokes the Court's supplemental jurisdiction to consider these state law claims.

GENERAL ALLEGATIONS

2. Plaintiff Ashley Brooks is and was at all material times mentioned herein a resident of the County of San Diego, State of California.

3. At all times mentioned herein defendants Davis and DOES 1 through 15 were employees of defendant CITY OF SAN DIEGO and in doing the acts hereinafter described acted within the course and scope of their employment. The acts of all defendants and each of them, were also done under the color and pretense of the statutes, ordinances, regulations, customs and usages of the State of California. The individual defendants named above and DOES 1 through 15 are sued individually and in their capacities as employees of the CITY OF SAN DIEGO.

4. Defendant CITY OF SAN DIEGO is a public entity existing under the laws of the State of California and is the employer of the individual defendants named above.

5. The true names or capacities whether individual, corporate, associate or otherwise, of defendants named herein as DOES 1 through 20 are unknown to Plaintiff, who therefore sues said defendants by said fictitious names. Plaintiff will amend this complaint to show said defendants' true names and capacities when the same have been ascertained. Plaintiff is informed and believes and thereon alleges that all defendants sued herein as DOES are in some manner responsible for the acts and injuries alleged herein.

6. Plaintiff is informed and believes and therefore alleges that at all times mentioned herein defendant Davis was the employee of defendant City of San Diego and was, in doing the acts herein alleged, acting within the course and scope of his employment and with the permission, consent and authority of defendant City of San Diego. Defendants Davis and City of San Diego are both responsible for the occurrences hereinafter alleged and Plaintiff's injuries as

alleged herein.

7. On or about March 11, 2013, Plaintiff filed a claim with the City of San Diego for the injuries alleged herein. On or about April 15, 2013 the claim was denied.

FACTUAL ALLEGATIONS

8. Plaintiff Ashley Brooks is a 30 year old law abiding citizen, five feet, three inches tall. She has worked as a veterinary technician for over eight years.

9. On September 23, 2012 Ms. Brooks was at Qualcomm Stadium attending her first San Diego Chargers football game. Ms. Brooks was ejected from the game for reasons that are not completely clear. Two San Diego police officers, Officer Jadarric Davis and Officer Posada, detained and eventually arrested Ms. Brooks, again for reasons that are not clear. During the arrest Officer Davis shot Ms. Brooks in the chest with his taser, without justification, causing severe pain and injury.

10. After being shot with the taser Ms. Brooks was being walked to a holding area by the two officers. Her hands were cuffed behind her. The officers were walking her around the perimeter of the stadium near some cement barriers. Officer Davis apparently became angry, either because of something Ms. Brooks said or because he felt Ms. Brooks tried to kick at him.

11. The officers stopped and pushed Ms. Brooks against a nearby cement barrier. Cuffed behind her back, Ms. Brooks was completely controlled and helpless. Nevertheless, Officer Davis lifted Ms. Brooks and violently slammed her onto the ground, face first, with tremendous force. Ms. Brooks' face and chin slammed onto the cement. Because she was handcuffed, Ms. Brooks had no way to break her fall. A loud "crack" could be heard by several nearby witnesses when Ms. Brooks' face slammed into the cement. The loud "crack" was Ms. Brooks jaw being fractured. Ms. Brooks was knocked unconscious and blood began pouring from her face. Her face was soon covered in blood.

12 Paramedics were called and resuscitation efforts began. Ms. Brooks was transported to Sharp Memorial Hospital and admitted to the trauma unit. When she became stable, surgery was performed to repair her fractured jaw. Her jaw had to be wired shut for numerous weeks. Two of her teeth had to be removed because of her injuries. Ms. Brooks also suffered a concussion, and was hospitalized for three days. No charges were filed against her.

13. The force and violence used by Officer Davis was wholly unnecessary, unjustified and grossly excessive. Handcuffed behind her back and only five feet, three inches tall, Ms. Brooks posed no threat to two much bigger, heavily armed police officers. Nothing justified the violent, grossly excessive force used by Officer Davis.

14. Approximately three weeks later, Officer Davis himself was arrested for exhibiting a weapon in a threatening manner and child endangerment, reportedly during a domestic violence incident involving his wife and a juvenile. He was booked into the San Diego County jail and was put on administrative leave by the police department.

15. As a result of this incident Ms. Brooks suffered a fractured jaw requiring surgery, a concussion, facial bruises and abrasions, a large gash in her chin requiring several stitches and leaving an obvious scar, loss of two teeth and other injuries. Ms. Brooks suffered severe pain, suffering and emotional distress from these injuries and from being shot with the taser. She has incurred over $75,000 in past medical bills and will incur additional medical bills for future treatment for her injuries. Ms. Brooks was unable to work for several weeks and thus incurred lost earnings.

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FIRST CAUSE OF ACTION

[42 U.S.C. § 1983 Constitutional Violations Against Defendant Davis]

16. Plaintiff realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 15 above as though fully set forth herein.

17. As a result of the acts alleged above, Defendant Davis used unreasonable, unjustified and excessive force on Plaintiff. This unreasonable and excessive use of force constituted an unlawful seizure, in violation of Plaintiff's constitutional rights as guaranteed by the Fourth Amendment to the United States Constitution. As a result, Plaintiff is entitled to damages pursuant to 42 U.S.C. § 1983 in an amount to be proven at trial.

18. As a further result of the acts alleged above, particularly the act of being assaulted and arrested in retaliation for speech that was lawful and protected by the First Amendment, Plaintiff suffered a violation of her right to freedom of speech as guaranteed by the First Amendment and an unlawful seizure in violation of her rights as guaranteed by the Fourth Amendment. As a result, Plaintiff is entitled to damages pursuant to 42 U.S.C. § 1983, et seq. in an amount to be proven at trial.

19. As a proximate result of the acts alleged above, Plaintiff was injured in mind and body, and sustained the injuries and damages alleged in paragraph 15 above, including a fractured jaw (requiring surgery and her jaw being wired shut), a concussion, loss of two teeth and a gash below her chin requiring several stitches. Plaintiff endured severe pain and suffering as a result of these injuries. Plaintiff also suffered severe emotional distress as a result of this incident, including that resulting from being assaulted in a public place, the use of excessive force against her, the injuries inflicted, the loss of two teeth and the resultant hospitalization, surgery, medical treatment, past medical expenses and medical treatment that will be required in the future. Plaintiff is therefore entitled

to general and compensatory damages in an amount to be proven at trial.

20. In committing the acts alleged above, Defendant Davis acted maliciously and/or was guilty of a wanton and reckless disregard for the rights, feelings and safety of Plaintiff, and by reason thereof Plaintiff is entitled to exemplary and punitive damages in an amount to be proven at trial.

SECOND CAUSE OF ACTION

[42 U.S.C. § 1983 Constitutional Violations – Unlawful Policies, Customs or Habits Against Defendant City of San Diego]

21. Plaintiff realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 20 above as though fully set forth herein.

22. On information and belief Plaintiff alleges that defendant City of San Diego, through its police department, has unlawful policies, customs and habits of improper and inadequate hiring, training, retention, discipline and supervision of its police officers, including defendant Davis, proximately causing the constitutional deprivations, injuries and damages alleged in the First Cause of Action. Plaintiff is further informed and believes that other citizens have been treated unlawfully and abused by City of San Diego police officers, but the City, through its police department, has a custom, policy or practice of failing to properly investigate citizen complaints and failing to take corrective or disciplinary action against officers who act improperly, thus leading to the constitutional violations against Plaintiff as described above. As a result, Plaintiff is entitled to damages pursuant to Title 42 U.S.C. § 1983 in an amount to be proven at trial.

23. On information and belief Plaintiff further alleges that defendant City of San Diego, through its police department, has an unlawful policy, custom or habit of permitting or condoning the unnecessary and unjustified use of force by its police officers and of permitting, condoning and failing to take action against

officers who commit acts of excessive force, malicious prosecution and retaliation. These policies and failures constituted ratification of, and acquiescence in, acts of excessive force, retaliation, unlawful search and seizure and other improprieties by police officers, including defendant Davis. These policies and failures were the moving force behind the injuries suffered by Plaintiff, constituted ratification by the City and its police department and also constituted deliberate indifference to the rights and safety of Plaintiff and other members of the public.

24. As a proximate result of the unlawful policies, customs and habits alleged above, Plaintiff suffered the constitutional violations, injuries and damages alleged in the Factual Allegations and the First Cause of Action and thus Plaintiff is entitled to general and compensatory damages against defendant City of San Diego in an amount to be proven at trial.

THIRD CAUSE OF ACTION

[Negligence, Against Defendants Davis and City of San Diego]

25. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 24 above as though fully set forth herein.

26. By the acts alleged above, Defendant Davis and/or other San Diego police officers were negligent and breached their duty of due care owed to Plaintiff, thereby causing the injuries and emotional distress described in the First Cause of Action, and the damages described in paragraphs 15 and 20 above.

FOURTH CAUSE OF ACTION

[Battery, Against Defendants Davis and City of San Diego]

27. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 26 above as though fully set forth herein.

28. By the acts alleged herein, particularly the acts of excessive force and violence inflicted on Plaintiff by Defendant Davis and/or other officers, Defendants committed a battery upon Plaintiff, entitling Plaintiff to damages pursuant to California law.

29. As a result of these acts Plaintiff suffered the injuries and damages described in paragraphs 15 and 19 above, entitling her to damages in an amount to be proven at trial.

30. In committing the acts alleged above, Defendant Davis acted maliciously and/or was guilty of a wanton and reckless disregard for the rights and feelings of Plaintiff and by reason thereof Plaintiff is entitled to exemplary and punitive damages in an amount to be proven at trial.

FIFTH CAUSE OF ACTION

[Civil Code § 52.1 Civil Rights Violations, Against Defendants Davis and City of San Diego]

31. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 30 above as though fully set forth herein.

32. The acts alleged above, particularly the acts of excessive force, malicious prosecution and retaliation described above, constituted an unlawful seizure and violation of the right to freedom of speech in violation of the First and Fourth Amendments, respectively, as well as Plaintiff's rights guaranteed by the California Constitution. These acts were committed by threats, intimidation and/or coercion. Therefore, Plaintiff is entitled to damages pursuant to California Civil Code section 52.1(b).

33. By reason of the acts alleged above, Plaintiff suffered the injuries and damages alleged in paragraphs 15 and 19 above. Plaintiff is therefore entitled to general and compensatory damages against Defendants and each of them in an amount to be proven at trial.

34. In committing the acts alleged above, Defendant Davis acted maliciously and oppressively and by reason thereof Plaintiff demands exemplary and punitive damages in an amount to be proven at trial.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as follows:

1. For general and compensatory damages against Defendants and each of them in an amount to be proven at trial;

2. For exemplary and punitive damages against Defendant Davis only, in an amount to be proven at trial;

3. For costs of suit herein, including reasonable attorneys fees; and

4. For such other relief as the Court deems proper.

Dated: May 2, 2013

/s/ Michael R. Marrinan
Attorney for Plaintiff
E-mail: mrmarrinan@aol.com

Plaintiff hereby requests a jury trial in this action.

Dated: May 2, 2013

/s/ Michael R. Marrinan
Attorney for Plaintiff
E-mail: mrmarrinan@aol.com

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
ASHLEY BROOKS

(b) County of Residence of First Listed Plaintiff SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Michael R. Marrinan (SBN 90484) 619-238-6900
225 Broadway, Suite 1460 San Diego, CA 92101

DEFENDANTS
CITY OF SAN DIEGO, JADARRIC DAVIS, and DOES 1-20

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)
'13CV1047 JM JMA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☒ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
42 U.S.C. Section 1983- Civil Rights Violations

Brief description of cause:
Excessive Force by Police Officer

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ Damages According to Proof

CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 5/2/2013

SIGNATURE OF ATTORNEY OF RECORD [signature]

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE